IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 175 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

REVA INVESTMENT PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 175 of 1988
MR BB NAIK with MR MANISH R BHATT for Petitioner
MR MK PATEL for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment year 1979-80 :-

"Whether, the Tribunal is right in law and on facts in cancelling the penalty levied by the ITO u/s. 273(1)(b) of the I.T. Act, 1961 ?"

2. The assessee is a Private Limited Company. For assessment year 1979-80, the assessee filed its return on 30.11.1979 declaring a loss of Rs.1,875/-. The Income-tax Officer noted that the assessee had itself declared excess realization of Rs.3,38,000/- on account of profit on sale of National Gold Bond 1980 and the Income-tax Officer held its to be income from an adventure in the nature of trade. Hence, the total income of the assessee was assessed at Rs.3,43,520/-. The Income-tax Officer also initiated penalty proceedings under Section 273(1)(c) for failure to file an estimate of advance tax payable and after hearing the assessee's objection, the Income-tax Officer levied penalty of Rs.20,000/-. The Commissioner of Income-tax (Appeals) was of the view that since the year under consideration was the first year of the claim of the assessee, it could not have been expected of the assessee to have anticipated the disallowance and the resulting addition to the income. The Commissioner of Income-tax (Appeals) cancelled the penalty levied by the Income-tax Officer. The revenue carried the matter in appeal before the Appellate Tribunal. The Tribunal confirmed the order of the Commissioner of Income-tax (Appeals). Hence, this reference at the instance of the revenue.

3. We have heard Mr BB Naik, learned counsel for the revenue and Mr MK Patel, learned counsel for the respondent-assessee.

4. Mr Naik has submitted that lack of knowledge of legal liability is not a sufficient cause for the assessee for not filing the statement of advance tax. Therefore, the Tribunal ought not to have confirmed the order of the Commissioner of Income-tax (Appeals).

5. On the other hand, Mr MK Patel, learned counsel for the assessee has submitted that for the assessment year under consideration, the statute itself provided that if the Income-tax Officer is satisfied that any assessee has without reasonable cause failed to furnish an estimate of the advance tax payable by him, the Income-tax Officer may direct that such person shall, in addition to the amount of tax payable by him, pay penalty. Mr Patel has, therefore, submitted that when the Tribunal has given a finding that the assessee had shown reasonable cause, it was a finding of fact. Mr Patel has relied on the decision of the Allahabad High

Court in CIT vs. Co-operative Cane Development Union Ltd., 101 ITR 368.

6. Having heard the learned counsel for the parties and having regard to the provisions of Section 273(1)(b) for the year under consideration and the finding of the Tribunal, we are of the view that since by virtue of the provisions of Section 2(14)(iv) of the Act 7% Gold Bonds 1980 were excluded from the purview of definition of "capital asset", the finding given by the Commissioner of Income-tax (Appeals) and the Tribunal that the belief of the assessee that income or profit earned by the assessee on the sale of National Gold Bonds 1980 would not be a taxable receipt was a reasonable and bona fide belief. Moreover, the controversy had not arisen in any of the earlier years. Of course, during the accounting period relevant to assessment year 1978-79 also the assessee Company had earned income on the sale of National Gold Bond 1980, but the assessment order for that year was passed long after filing of the return for the year under consideration.

7. In CIT vs. Co-operative Cane Development Union Ltd., 101 ITR 368, the Allahabad High Court had an occasion to consider a similar defence. In that case, the Court held that when the Tribunal has accepted the assessee's defence that the advance tax had not been paid because it was under the bona fide belief that its income was exempt from tax, it would be a sufficient cause for not levying penalty for not depositing the advance tax.

8. In the facts and circumstances of the present case, we are also of the view that the finding of the Tribunal that the assessee had shown sufficient cause cannot be said to be illegal.

9. In view of the above discussion, our answer to the question is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (D.A. Mehta, J.)

sundar/-